S.B. CIVIL WRIT PETITION NO.3500/2007.

Bhagwan Das
Vs.
Smt.Anjana Devi and ors.

Date of Order : 11/5/2007.

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Suresh Sahni for the petitioner.

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This writ petition seeks to challenge the order dated 20/4/2007 whereby the District and Sessions Judge Kota appointed a Court Commissioner to inspect the site and submit a report as to the status of the construction said tobe raised on the disputed property.

Learned counsel for the petitioner argued that the impugned order would not be covered by provisions of Order 26 Rule 9 CPC according to which the court had authority to appoint Commissioner for the purpose of local inspection for deciding the matter in dispute. The said controversy did not fall within the purview of the act of those parametres and therefore the very appointment of the

Commissioner was incompetent.

Having heard learned counsel for the parties and perusing the material available on record, I find that not only the Commissioner had been appointed but he has also submitted his report. The petitioner is always free to submit his objections to the Commissiner and he can challenge the said question of appointment of a Commissioner by making submission before the concerned court

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The petitioners have challenged the judgment dated 7/9/2006 (Ann.4) passed by the Board of Revenue whereby the appeal filed by Kishan Singh, respondent No.4 against the judgment dated 24/1/2006 (Ann.3) was allowed and the judgment of the revenue appellate authority dated 30/5/2000 (Ann.2) whereby the petitioners were declared khatedars

of Khasra No.805 rakba 0.48 hectare was reversed. The petitioners have also challenged the order dated 7/9/2006 (Ann.4) whereby their review petition was also rejected by the Board of Revenue.

Learned counsel for the petitioners argued that in the Settlement of the year 1982-83, father of the petitioner was found in possession of the land in question and entry to this effect was made in Parcha Khatuni on 12/10/1982. Learned counsel refers to the order dated 26/4/1985 passed by the Land Settlement Officer Bharatpur in appeal filed by Chhita Singh who is one of the petitioners herein where it was recorded that the possession of the father of the petitioner on the land in dispute was quite old possession but the khatedari

rights could not be conferred because same was the domain of the revenue authorities. Thereafter, the petitioners filed a suit but the same was rejected by the Assistant Collector vide order dated 24/3/1994 and, thereafter, the appeal filed by the petitioners was allowed by the revenue appellate authority on 3/6/1995 however, respondent No.4 filed an appeal before the Board of Revenue and the Board of Revenue vide judgment dated 31/3/1999 remitted the matter back to the revenue appellate authority to decide it afresh by giving judgment issue-wise. Thereafter, the revenue appellate authority again decided the matter vide order dated 30/5/2000 declaring thereby the petitioners as khatedars of the land in question.

Learned counsel while referring to the findings of the revenue appellate authority which it recorded in appeal, argued that authority found that Exh.4 and Exh.5 were original one and, therefore, in view of Section 15 of the Rajasthan Tenancy Act, 1955, the petitioners were entitled for possession of the land on the basis of adverse possession spread over for a period of more than 12 years. It was argued that the learned Board of Revenue erred in reversing the judgment passed by the learned revenue appellate authority and in doing so, it has not considered the material on record specially those related to possession of the father of petitioner in true perspective. Learned Board of Revenue has also committed a

serious error in law in rejecting the review petition.

Having heard learned counsel for the petitioners and considered the materials available on record, I find that the Board of Revenue while reversing the judgment of the revenue appellate authority dated 24/1/2006 has noted that the petitioners did not at all adduce any evidence as to his/their possession over the land in dispute. The sole assumption that possession over the land was old one, does not form the basis for conferment of khatedari rights. The Board of Revenue found that the authority merely on the basis of the discussion made in the order of Land Settlement Officer Bharatpur dated 26/4/1985 erred in conferring the khatedari rights of the

petitioners. This was a vague discussion about the old possession of the father of the petitioner but that did not constitute proof of the fact that possession was for more than 12 years or it was in existence at the time of commencement of the Rajasthan Tenancy Act, 1955. The same findings were repeated by the Board of Revenue in the subsequent order dated 7/9/2006 when the review petition of the petitioners was rejected.

On perusal of the judgment of the Board of Revenue as also two judgments of the learned revenue appellate authority, I find that the petitioners themselves are not clear about their khatedari rights by virtue of provisions of Section 15 of the Rajasthan Tenancy Act, 1955.

While on the other hand, they are claiming the khatedari rights over the land in question on the basis of adverse possession having remained with them for more than 12 years, on the other, they claim such right by virtue of Section 15 of the Act. Neither any document to prove this fact nor any other sort of proof has been brought on record to show that petitioners or their father, were in possesion as on 15/10/1955 when the Act of 1955 was enforced. They have not even adduced any reliable evidence to show that their possession over the land in dispute was for more than 12 years when the suit was filed.

In my considered view, none of the impugned-judgments, either of the Board of Revenue or of the revenue appellate

authority, suffer from any error so as to warrant interference by this Court.

The writ petition is accordingly dismissed summarily.

(MOHAMMAD RAFIQ), J.

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